STRAITS SETTLEMENTS REPORTS.

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[ORIGINAL CIVIL JURISDICTION]
HUGGARD, C.J.
April 1, 1935.

IN THE MATTER OF TAN KAH KEE & CO., LIMITED IN LIQUIDATION
And
IN THE MATTER OF SECTION 235 OF ORDINANCE NO. 155 (COMPANIES)
And
IN THE MATTER OF CLAIM BY KWEK SOON.

[SINGAPORE ORIGINATING MOTION No. 7 of 1935]

Company—Voluntary liquidation—Assignee of preferential debt—Priority—Ordinance No. 155 (Companies) S. 235 (1) (b).

A Kepala (foreman) claiming in a liquidation who has paid off the wages from his own pocket of coolies unpaid at the date of the liquidation, is entitled to stand in their shoes and be a preferred creditor.

Re: Chop Poh Tak Hin (Quarterly Notes, 1927, p. 10) referred to and applied.

Originating Motions.

These were three originating motions brought by three different applicants who were until February, 1935, employed as foremen or Kepalas in Tan Kah Kee Co., Ltd. (now in voluntary liquidation). The facts in all the three motions were identical. A decision was given in Originating Motion No. 6 of 1935 only it being agreed that the decisions in Originating Motions 7 and 8 of 1935 should follow that given in Originating Motion No. 6 of 1935.

The applicant was a kepala in the carpentry department of Tan Kah Kee & Co., Ltd., in voluntary liquidation. The Company employed a superintendent or supervisor to manage the Company's factory. The superintendent had under him a number of kepalas also under the employ of the Company who were paid a daily salary of $1.20 each when working. Their duty was to engage and control the necessary skilled labourers and to carry out the work in about sixty various sections or departments in the factory. The superintendent issued written orders to the kepalas in the departments concerned to carry out certain work mentioned in the orders and the kepalas got the work done with his skilled labourers under him. After any work was completed and examined by the superintendent and the amount to be paid for ascertained the superintendent issued a blue chit or chits or cash order for the amount due. The chit was then signed or chopped by a representative of the Company payable in the name of the Kepala of the department showing the amount payable and the date of payment. On presentation of the blue chits or cash orders to the cashier in the factory or at the head office cash was paid in exchange for the blue chits. When the Kepala cashed the blue chits issued to him he in turn after deducting any advances received by the labourers paid them the balance and took back the notes issued by him.

At the date of the liquidation of the Company the number of skilled labourers working under the applicant was 28 and 19 blue chits were issued to him for work done in the factory in January and February, 1934, amounting to the aggregate sum of $1,576.01. The Liquidators refused to pay the amounts due on the chits and the applicant, pressed by the labourers, paid off the wages due to them with his own money.

The question for the Court was, whether the said kepalas or foremen could in the circumstances prove as preferential creditors in the liquidation.

Fung in Originating Motion 6 read the motion and affidavit. S. 235 (1) (b) Ordinance No. 155 (Companies).

Osborne-Jones (in Motions 7 & 8) referred to Ordinance No. 155 (Companies) S. 235 (1) (b) and to S. 264 of Companies Act 1929, s.3 that "where any payment on account of wages or salary has been made to any clerk, servant or workman or labourer in the employment of a company out of money advanced by some person for that purpose that person shall in a winding up have a right of priority in respect of money so advanced and paid up to the amount by which the sum in respect of which that clerk, servant, workman, or labourer would have been entitled to priority in the winding up, has been diminished by reason of the payment having been made."

He also referred to *Gore-Brown's* Handbook on Joint Stock Companies (37th Edition) pp. 697 and 698; but this amendment in the Imperial Act of 1929 has not yet been included in the relevant portion of the local Ordinance.

The decision in *Re Lamplugh Iron Ore Co.*, (1927) 1 Ch. 308, though somewhat analogous, was ultimately governed by S. 5 of the Mercantile Law Amendment Act 1856; but Deane, J. in *Re Chop Poh Tak Hin* (Quarterly Notes: Straits Settlements Vol: 1 p. 10) held that an assignee of a defaulting contractor who had paid the wages of coolies due by the said contractor could prove in a bankruptcy as a preferential creditor.

Smith for the Liquidators submitted to such ruling as the Court should make.

HUGGARD, C.J. in an oral judgment allowed the claim of the applicant.

Order accordingly.

Solicitor for the Appellant—
D. G. Osborne-Jones.

Solicitors for the Liquidators of Tan Kah Kee & Co., Ltd.—*Donaldson & Burkinshaw.*